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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Barley

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the U.S. Standards for Barley (barley standards) under the United States Grain Standards Act (USGSA) by revising the definitions of other terms to remove Six-rowed Blue Malting barley and the reference to kernels with white aleurone layers. Further, GIPSA is revising the barley standards to add the factors injured-by mold and mold-damaged kernels to the subclass Six-rowed Malting barley. Finally, GIPSA is revising the grade requirements for Two-rowed Malting Barley and Six-rowed Malting barley, and removing those for Six-rowed Blue Malting barley.

DATES: This rule is effective August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll, 202-720-8286.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Barley is defined in the U.S. Standards for Barley as grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare*

L.) and not more than 25 percent of other grains for which standards have been established under the USGSA (7 U.S.C. 71-87k). The term “barley” as used in these standards does not include hull-less barley or black barley.

In 2015, U.S. barley producers harvested 3.1 million acres of barley, producing 214.3 million bushels of the grain. Beer production in the United States accounts for approximately 56 percent of total domestic use; feed and industrial uses account for about 36 percent of domestic use; and whiskey, food and seed account for about 8 percent of domestic use (2005-2014 average). Barley is also exported for feed and malting purposes, typically accounting for less than five percent of total barley usage.

Section 76 of the USGSA authorizes GIPSA to establish and maintain the standards for barley and other grains regarding kind, class, quality, and condition (7 U.S.C. 76(a)). The barley standards facilitate the marketing of barley, define U.S. barley quality, and define commonly used industry terms in the domestic and global marketplace. Also, the barley standards contain basic principles such as the basis of determination used for a particular quality factor analysis, as well as specify grades, grade requirements, special grades, and special grade requirements. The barley standards were established on August 24, 1926, were last revised in 1997, and appear in the USGSA regulations at 7 CFR 810.201 through 810.207.

Changes to Barley Standards

This final rule makes several revisions to the barley standards. The term “Blue Malting barley” and references to kernels with white aleurone layers are being removed from the definitions and the subclass Six-rowed Blue Malting barley is being removed from the barley standards (7 CFR 810.202 and 810.204). These references are being removed because (1) blue aleurone barley is no longer used by the malting and brewing industry in the United States, (2)

no blue aleurone malting varieties are grown for export, and (3) United States production of blue aleurone malting barley is minimal.

Further, the grade requirement tables for Six-rowed Malting barley and Two-rowed Malting barley are being harmonized to have the same grade limits for all factors except for test weight and thin barley.

The following changes are being made to the grade requirements for Six-rowed Malting barley:

- The minimum limit for barley of suitable malting types for grade numbers 1 and 2 is increased.
- The minimum percentage of sound barley for all grades is increased.
- Maximum limits of wild oats are added to all grades.

The following changes are being made to the grade requirements for Two-rowed Malting barley:

- Maximum limits of damaged kernels are added to all grades.
- Maximum limits of other grains are added to all grades.
- The maximum limits for skinned and broken kernels are lowered for grade numbers 1, 2, and 3.

Along with the changes to the grade requirements, the definition of Six-rowed Malting barley is being revised to include limits for injured-by-mold kernels and mold-damaged kernels.

These changes are being made as the result of producer and industry comments in response to an Advance Notice of Proposed Rulemaking published on October 4, 2011, in the *Federal Register* (76 FR 61287). The comments stated that historical differences between six-rowed and two-rowed barley varieties have declined significantly and both classes are grown for the same

uses. Commenters recommended that the standards for the classes should be harmonized with each other. The exceptions to this are the factors test weight and thin barley, for which genetic differences still exist between six-rowed and two-rowed varieties.

Inspection Plan Tolerances

Additionally, these changes to the grade standards make it necessary to update the tolerances for the inspection of shiplot, unit train, and lash barges in single lots. These types of lots are inspected using a statistically based inspection plan, which uses tolerances to allow slight deviation in quality. These tolerances, published in Table 1 and Table 2 of section 800.86(c)(2), are being updated to reflect the harmonization of the standards.

Proposed Rule Comment Review

On July 25, 2014, GIPSA issued a proposed rule requesting comments on proposed changes to the barley standards (79 FR 43281). GIPSA received two comments in response to this proposed rule.

One comment came from a malting barley industry group. The comment expressed agreement with the changes in the proposed rule, commenting that the changes in the barley standards provide consistency for barley trading and insurance purposes.

The other comment came from a farmer who grows wheat and barley. The comment expressed concern that, by adding limits for injured-by-mold and mold-damaged kernels to Six-rowed Malting barley, the proposed rule might impose more restrictions on growers of barley. Since mold is primarily a storage issue, these additions should not place any further burden on barley producers. Furthermore, the inclusion of these factors in the barley standards should allow crop insurance to cover losses to farmers in the event that mold damage does occur, protecting the farmers from rejection of their crop by buyers.

Effective Date

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than 1 calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. Following this section of the USGSA, GIPSA has determined that it is in the public interest to make this final rule effective on August 1, 2018, in order to coincide with the start of the barley marketing year.

Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). Under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rule affects customers of GIPSA's official inspection and weighing services in the domestic and export grain markets such as grain elevators/merchants (NAICS 424510), those in the malt manufacturing industry (NAICS 311213), and official grain inspection agencies.

GIPSA is revising the barley standards in the Definitions of Other Terms by removing Six-rowed Blue Malting barley and the reference to kernels with white aleurone layers. In addition, the change adds injured-by-mold and mold-damaged kernels to the definition of Six-rowed Malting barley. The definition change also revises the grade and grade requirements for Two-rowed Malting barley. Further, the grade and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley are revised. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. GIPSA provides mandatory inspection and weighing services at 45 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the regulations are applied equally to all entities. The USGSA (7 U.S.C. 87f-1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. Section 800.30 of the USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as a person who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 108 registrants registered to export grain. GIPSA believes that most of the 108 registrants are large businesses and very few are small businesses.

GIPSA also provides domestic and miscellaneous inspection and weighing services at other than export locations. Such services are provided by official state and private agencies. Approximately 217 different applicants receive domestic inspection services each year and

approximately 150 different locations receive track scale tests as a miscellaneous service each year.

Most users of the official inspection and weighing services do not meet the requirements for small entities nor do the agencies that provide such services. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. There would be no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. Further, GIPSA has not identified any other Federal rules that may duplicate, overlap or conflict with this rulemaking. Therefore, GIPSA has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities as defined in the RFA.

Executive Order 12988

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This rulemaking has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. GIPSA has received no requests for official services for barley from any Tribal Government. Therefore, GIPSA believes

that this rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rulemaking has previously been approved by the OMB under control number 0580–0013.

GIPSA is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to maximum extent possible.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71-87k.

2. In § 800.86, Table 1 and Table 2 in paragraph (c)(2) are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

(c) ***

(2) ***

Table 1—Grade Limits (GL) and Breakpoints (BP) for Six-Rowed Malting Barley

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP
U.S. No. 1	47.0 -0.5	97.0 -1.0	98.0 -0.8	2.0 0.8	1.0 0.6	0.5 0.1	2.0 0.8	4.0 1.1	7.0 0.6
U.S. No. 2	45.0 -0.5	97.0 -1.0	98.0 -0.8	3.0 0.9	1.0 0.6	1.0 0.4	3.0 0.9	6.0 1.4	10.0 0.9
U.S. No. 3	43.0 -0.5	95.0 -1.3	96.0 -1.1	4.0 1.1	2.0 0.8	2.0 0.5	5.0 1.3	8.0 1.5	15.0 0.9
U.S. No. 4	43.0 -0.5	95.0 -1.3	93.0 -1.1	5.0 1.3	3.0 0.9	3.0 0.6	5.0 1.3	10.0 1.6	15.0 0.9

¹Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Table 2—Grade Limits (GL) and Breakpoints (BP) for Two-Rowed Malting Barley

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP	GL BP
U.S. No. 1	50.0 -0.5	97.0 -1.0	98.0 -0.8	2.0 0.8	1.0 0.6	0.5 0.1	2.0 0.8	4.0 1.1	5.0 0.4
U.S. No. 2	48.0 -0.5	97.0 -1.0	98.0 -0.8	3.0 0.9	1.0 0.6	1.0 0.4	3.0 0.9	6.0 1.4	7.0 0.5

U.S. No. 3	48.0 -0.5	95.0 -1.3	96.0 -1.1	4.0 1.1	2.0 0.8	2.0 0.5	5.0 1.3	8.0 1.5	10.0 0.9
U.S. No. 4	48.0 -0.5	95.0 -1.3	93.0 -1.1	5.0 1.3	3.0 0.9	3.0 0.6	5.0 1.3	10.0 1.6	10.0 0.9

¹Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTE: Malting barley must not be infested in accordance with §810.107(b) and must not contain any special grades as defined in §810.206. Six- and two-rowed barley varieties not meeting the above requirements must be graded in accordance with standards established for the class Barley.

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71-87k.

4. In § 810.202, paragraph (c)(1) is revised to read as follows:

§ 810.202 Definition of other terms.

(c) ***

(1) *Malting barley* is divided into the following two subclasses:

(i) *Six-rowed Malting barley* has a minimum of 95.0 percent of a six-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Six-rowed Malting barley must not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Two-rowed Malting barley* has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-

damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley must not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

5. Section 810.204 is revised to read as follows:

§ 810.204 Grades and grade requirements for Six-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	7.0
U.S. No. 2	45.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	15.0
U.S. No. 4	43.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	15.0

¹Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

NOTE: Malting barley must not be infested in accordance with §810.107(b) and must not contain any special grades as defined in §810.206. Six-rowed Malting barley varieties not meeting the requirements of this section must be graded in accordance with standards established for the class Barley.

6. Section 810.205 is revised to read as follows:

§ 810.205 Grades and grade requirements for Two-rowed Malting barley.

Grade	Minimum limits of—			Maximum limits of—					
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley ¹ (percent)	Damaged kernels ¹ (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	50.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	5.0
U.S. No. 2	48.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	7.0
U.S. No. 3	48.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	10.0
U.S. No. 4	48.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	10.0

¹Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley must not be infested in accordance with §810.107(b) and must not contain any special grades as defined in §810.206. Six-rowed Malting barley and Six-rowed Blue Malting barley varieties not meeting the requirements of this section must be graded in accordance with standards established for the class Barley.

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